

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

BIG TIME VAPES, INC., *et al.*,

*Plaintiffs,*

v.

U.S. FOOD AND DRUG  
ADMINISTRATION, *et al.*,<sup>1</sup>

*Defendants.*

Civil Case No. 1:19-cv-531-LG-JCG

**DEFENDANTS' MOTION TO DISMISS**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Local Uniform Civil Rule 7, and the Court's October 29, 2019 Order (ECF No. 23), Defendants move to dismiss Plaintiffs' complaint (ECF No. 1), with prejudice, in its entirety, for failure to state a claim upon which relief can be granted, for the reasons stated in the combined memorandum of law that is being filed concurrently with this motion. Specifically, as explained in Defendants' combined memorandum, Plaintiffs have failed to state a claim under the nondelegation doctrine or the Declaratory Judgment Act.

---

<sup>1</sup> Admiral Brett P. Giroir, M.D., is now the Acting Commissioner of Food and Drugs, and is therefore automatically substituted as a defendant in his official capacity for Dr. Norman E. Sharpless, M.D., pursuant to Federal Rule of Civil Procedure 25(d).

November 6, 2019

Respectfully submitted,

Of counsel:

ROBERT P. CHARROW  
General Counsel  
U.S. Dep't of Health and Human Services

STACY CLINE AMIN  
Chief Counsel  
Food and Drug Administration  
Deputy General Counsel  
Department of Health and Human Services

PERHAM GORJI  
Deputy Chief Counsel for Litigation

WENDY S. VICENTE  
Senior Counsel

NOAH T. KATZEN  
Associate Chief Counsel  
Office of the Chief Counsel  
Food and Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993-0002

JOSEPH H. HUNT  
Assistant Attorney General

D. MICHAEL HURST, JR.  
United States Attorney

ERIC B. BECKENHAUER  
Assistant Director

/s/ Stephen M. Pezzi  
STEPHEN M. PEZZI  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, DC 20005  
Tel: (202) 305-8576  
Email: stephen.pezzi@usdoj.gov

EMILY S. NOBILE  
Assistant United States Attorney  
Office of the United States Attorney  
Southern District of Mississippi

*Counsel for Defendants*